
DECLARATION
OF
PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS,
CHARGES AND LIENS -
MOUNTAINVIEW TOWNHOUSES ASSOCIATION, INC.
(THE MOUNTAINVIEW TOWNHOUSES DECLARATION)

MADE BY: EVL MOUNTAINVIEW, LLC
350 Essjay Road, Suite 101
Williamsville, New York 14221

DATED: _____, 2004

HODGSON RUSS, LLP
ONE M&T PLAZA, SUITE 2000
BUFFALO, NEW YORK 14203

**DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,
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MOUNTAINVIEW TOWNHOUSES ASSOCIATION, INC.
(THE MOUNTAINVIEW TOWNHOUSES DECLARATION)**

THIS DECLARATION, made this _____ day of _____, 2004, by EVL Mountainview LLC, having an office at 350 Essjay Road, Williamsville, New York 14221, being referred to hereinafter as "the Sponsor."

WITNESSETH

WHEREAS, the Sponsor is the owner of the real property described in Article II of this Declaration which the Sponsor desires to develop into a residential community known or to be known as "Mountainview Townhouses" with open spaces and other common facilities for the benefit of said community; and

WHEREAS, the Sponsor desires to provide for the preservation of the values and amenities in said community and for the maintenance of said open spaces and other common facilities; and, to this end, desires to subject the real property described in Article II to the covenants, conditions, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

WHEREAS, the Sponsor desires that such real property be subdivided into lots upon which are, or will be constructed residential dwelling units, which lots and units will be individually owned, and the Sponsor desires that the open spaces and other common facilities shall remain available for the benefit of all members of the community; and

WHEREAS, the Sponsor has deemed it desirable, for the efficient preservation of the values and amenities in said community to create an agency to which should be delegated and assigned the powers of maintaining and administering the community property and facilities, maintaining the exteriors of the dwelling units and garages, and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, the Sponsor has incorporated MOUNTAINVIEW TOWNHOUSES ASSOCIATION, INC., under the Not-for-Profit Corporation Law of the State of New York for the purpose of exercising the aforesaid functions.

NOW THEREFORE, the Sponsor, for itself, its successors and assigns, declares that the real property described in Section 2.01 hereof and such additional property described in Section 2.02 hereof, as may be brought under the scope of this Declaration from time to time, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions,

restrictions, easements, charges and liens (sometimes referred to as "covenants, conditions and restrictions") hereinafter set forth.

ARTICLE I DEFINITIONS

Section 1.01. Definitions. The following word, phrases or terms when used in this Declaration or in any instrument supplemental to this Declaration shall, unless the context otherwise prohibits, have the following meanings:

- A. "Association" shall mean and refer to MOUNTAINVIEW TOWNHOUSES ASSOCIATION, INC.
- B. "Association Property" shall mean and refer to all land, improvements and other properties heretofore or hereafter owned by the Association.
- C. "Declaration" shall mean and refer to this document of Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens - Mountainview Townhouses Association, Inc. as it may from time to time be supplemented, extended or amended in the manner provided for herein.
- D. "Lot" shall mean and refer to any portion of the Property (with the exception of Association Property as heretofore defined) under the scope of this Declaration and (i) identified as a separate parcel on the tax records of the Town of Ellicottville or (ii) shown as a separate lot upon any recorded or filed subdivision map.
- E. "Lot Owner" shall mean the owner of a "Lot".
- F. "Owner" shall mean and refer to the holder of record title, whether one or more persons or entities, of the fee interest in any Lot or Unit, whether or not such holder actually resides in such Unit or on such Lot.
- G. "Property" shall mean and refer to all properties as are subject to this Declaration.
- H. "Unit" shall mean and refer to a residential unit.

ARTICLE II PROPERTY SUBJECT TO THIS DECLARATION

Section 2.01. Property. The real property which is, and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in the Town of Ellicottville, County of Cattaraugus and State of New York, all of which property shall be

hereinafter referred to as the "Property". The real property initially subject to this Declaration is known as "Phase I" and is described in Schedule A attached hereto.

- a. Additional Property. Other lands ("Additional Property"), in addition to the lands described in Schedule A, may become subject to this Declaration. The Sponsor may, without the consent of Lot Owners, within 8 years of the date of recording of this Declaration, bring within the scope of this Declaration all or any portion of the lands described in Schedule B of this Declaration.

Such additional lands shall be added to this Declaration by the recording in the Cattaraugus County Clerk's Office of a supplemental extending declaration which shall extend the scope of the covenants and restrictions of this Declaration to such additional lands and thereby subject such additional lands and the owners of such lands to assessments for their fair share of the expenses of the Association. The supplemental extending declaration may also contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with the provisions of this Declaration, including but not limited to a different assessment basis reflecting the maintenance costs to be incurred by the Association in the maintenance of Unit exteriors and common areas which might be different from Phase I

Any buildings or other improvements on such lands or to be constructed on such lands will be harmonious in style to those improvements on lands previously covered by this Declaration. Nothing contained in this Declaration or in any recorded or unrecorded plan, map, picture, drawing, brochure or other representation of a plan or development shall be construed as requiring the Sponsor or the Association to subject to the provisions of this Declaration any other lands now or hereafter owned by them regardless of whether or not such lands are subjected to an agreement containing provisions similar to those contained in this Declaration. This Section may not be amended to alter or abridge the Sponsor's right to bring lands within the scope of this Declaration prior to 8 years from the date of recording of this Declaration without the written consent of the Sponsor.

Section 2.02. Mergers. Upon a merger or consolidation of this Association with another association as provided in its Certificate of Incorporation or By-Laws, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of this Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Property together with the covenants, conditions and restrictions established upon any other properties. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration within the Property except as hereinafter provided.

**ARTICLE III
THE ASSOCIATION
STRUCTURE, MEMBERSHIP, VOTING RIGHTS AND DIRECTORS**

Section 3.01. Formation of the Association. Pursuant to the Not-for-Profit Corporation Law of New York, the Sponsor has formed Mountainview Townhouses Association, Inc. (the "Association"), to own, operate, and maintain the Association Property, enforce the covenants, conditions and restrictions set forth in this Declaration and to have such other specific rights, obligations, duties and functions as are set forth in this Declaration and in the Certificate of Incorporation and By-Laws of the Association, as the same may be amended from time to time. Subject to the additional limitations provided in this Declaration and the Certificate of Incorporation, the Association shall have all the powers and be subject to the limitations of a not-for-profit corporation as contained in the New York State Not-for-Profit Corporation Law as the same may be amended from time to time.

Section 3.02. Membership. The Association shall have as members Lot Owners and the Sponsor. All Lot Owners shall, upon becoming such, be deemed automatically to have become members and there shall be no other qualification for membership. Membership shall be appurtenant to, and shall not be separated from the ownership of any of the interests described in the definitions of the words "Lot Owner" and "Sponsor" as found in Article I of this Declaration.

Section 3.03. Voting: Mortgagee's Control of Votes. Each Lot Owner, including the Sponsor, shall be entitled to one (1) vote. Notwithstanding anything to the contrary which may be contained in this Declaration, if an institutional first mortgage lender whose name appears on the records of the Association (i) holds a mortgage on a Lot which prohibits the mortgagor from voting contrary to the interest of the mortgagee, and (ii) notifies the Association prior to the date or initial date of canvass on the vote to be taken of its position on the matter being voted upon, a vote of the Lot Owner contrary to the position of such mortgage lender shall not be counted in such canvass.

Section 3.04. Lots Owned or Held by More Than One Person or by a Corporation. When any Lot is owned or held by more than one person as tenants by the entirety, in joint or common ownership or interest, such Owners shall collectively be entitled to only one (1) vote and if such Owners cannot jointly agree as to how that vote should be cast, no vote shall be allowed.

In the case of a corporate Lot Owner, votes may be cast by an appropriate officer of such corporation.

Section 3.05. Holder of Security Interest Not a Member. Any person or entity which holds an interest in a Lot or Unit merely as security for the performance of an obligation shall not be a member.

Section 3.06. Assigning Right to Vote. Subject to the consent of not less than two-thirds (2/3) of all Lot Owners other than the Sponsor (except for a transfer to a wholly owned subsidiary of the Sponsor) and the filing of an amendment to the offering plan pursuant to which the Sponsor has offered interests in the Association, the Sponsor may assign its membership in the Association to any person, corporation, association, trust or other entity, and such assignee, and any future assignee of such membership, may make successive like assignments. Any other Lot Owner shall be entitled to assign his right to vote, by power of attorney, by proxy or otherwise, provided that such assignment is made pursuant to the By-Laws of the Association. The By-Laws may require that the assignment specify the meeting or issue to which the assignment applies.

Section 3.07. Meeting and Voting Regulations. The Board of Directors of the Association may make such regulations, consistent with the terms of this Declaration and the Certificate of Incorporation and By-Laws of the Association and the Not-for-Profit Corporation Law of the State of New York as it may deem advisable for any meeting of its Owner members, in regard to proof of membership in the Association, evidence of right to vote, the appointment and duties of inspectors of votes, registration of Lot Owners for voting purposes, the establishment of representative voting procedures, the establishment of extended canvass periods for voting and such other matters concerning the conduct of meetings and voting as it shall deem appropriate.

Section 3.08. Selection of Directors. The nomination and election of Directors and the filling of vacancies on the Board of Directors shall be governed by the By-Laws of the Association.

Section 3.09. Powers and Duties of Directors. The powers and duties of the Board of Directors shall be as set forth in the By-Laws of the Association.

Section 3.10. Indemnification of Officers and Directors. Every director and officer of the Association shall be, and is hereby, indemnified by the Association against all expenses and liabilities, including fees of counsel, judgments, decrees, fees, penalties or amounts paid in settlement, reasonably incurred by or imposed upon such director or officer in connection with the defense of any pending or threatened action, suit or proceeding, criminal or civil, to which such officer or director may be a party, or in which such officer or director may become involved, by reason of being or having been a director or officer of the Association, whether or not such person is a director or officer at the time such expenses are incurred, except in such cases wherein the director or officer is adjudged guilty of willful misfeasance or malfeasance in the performance of duties; provided, that in the event of a settlement, the indemnification herein shall apply only when the Board of Directors of the Association approves such settlement as being in the best interests of the Association. The foregoing right of indemnification shall be in addition to, and shall not be exclusive of, all rights to which each such director or each such officer may otherwise be entitled. Funds to cover the above expenses, including fees of counsel, may be advanced by the Association, prior to the final disposition of the matter, upon receipt of

an undertaking by or on behalf of the recipient to repay such amounts if it shall ultimately be determined that the recipient is not entitled to indemnification hereunder.

Section 3.11. Sponsor's Written Consent Necessary for Certain Actions Taken by Board of Directors. Notwithstanding anything to the contrary contained in Declaration, so long as the Sponsor holds title to any lands described in Schedules A and B to this Declaration (whether or not subject to this Declaration), the Board of Directors may not, without the Sponsor's written consent, which consent must not be unreasonably withheld, (i) except for necessary repairs or any repairs required by law, make any addition, alteration, or improvement to the Association Property, (ii) assess any amount for the creation of, addition to or replacement of all or part of a reserve, contingency or surplus fund in excess of an amount equal to the proportion of the then existing budget which the amount of reserves in the initial budget of estimated expenses for the Association bears to the total amount of such initial budget of estimated expenses for the Association; or (iii) hire any employee in addition to the employees, if any, provided for in the initial budget of the Association, except as may be necessary to maintain the quantity or quality of services or maintenance; or (iv) enter into any service or maintenance contract for work not provided for in the initial budget of the Association, except for service or maintenance to facilities not in existence or not owned by the Association at the time of the first conveyance of a Lot; or (v) borrow money on behalf of the Association; or (vi) reduce the quantity or quality of services or maintenance of the Property. So long as the Sponsor holds title to any lot or dwelling unit on lands described in Schedules A and B to this Declaration (whether or not subject to this Declaration), this Section shall not be amended without the written consent of the Sponsor.

The Sponsor shall not, so long as the Sponsor is in control of the Board of Directors of the Association, use its position of control to (i) reduce the level of services described in the offering plan filed with the New York State Department of Law pursuant to which the Sponsor offered Lots for sale together with interests in the Association, (ii) prevent capital repairs to the Association Property or (iii) prevent expenditures required to comply with applicable laws or regulations.

ARTICLE IV

PROPERTY RIGHTS AND EASEMENTS

Section 4.01. Dedication of Association Property. The Sponsor intends to convey to the Association, subsequent to the recordation of this Declaration, and subject to the provisions of this Declaration, certain tracts of land within the Property for the use and enjoyment of the Owners. Said tracts of land conveyed to the Association shall hereinafter be referred to as "Association Property." The Association must accept any such conveyance made by the Sponsor provided such conveyance is made without consideration.

Section 4.02. Right and Easement of Enjoyment in Association Property. Every Lot Owner (and such Lot Owner's guests, licensees, tenants and invitees) shall have a right and

easement of enjoyment in and to all Association Property, subject, however, to the rights of the Association as set forth in Sections 4.03 and 4.05 herein and the rights of the Sponsor as set forth in Section 4.04 herein. Such easements shall be appurtenant to and shall pass with the interests of a Lot Owner, as defined in Article I, Section 1.01 hereof.

Every Lot Owner shall also have an easement for ingress and egress by vehicle or on foot as described in Section 4.06 hereof and the common utility and conduit easements described in Section 4.05 hereof. These easements will be subject to the rights of the Association as set forth in Section 4.03 herein, provided, however, that any conveyance or encumbrance referred to in Section 4.03(c) below shall be subject to said easement of each Lot Owner for ingress and egress.

Section 4.03. Rights of Association. With respect to the Association Property owned, and in accordance with the Certificate of Incorporation and By-Laws of the Association, the Association shall have the right:

- a. to promulgate rules and regulations relating to the use, operation and maintenance of the Association Property for the safety and convenience of the users thereof or to enhance the preservation of such facilities or which, in the discretion of the Association, shall serve to promote the best interests of the Lot Owners;
- b. to grant easements or rights of way, with or without consideration to any public or private utility corporation, cable television company, governmental agency or political subdivision;
- c. to dedicate, sell, transfer, abandon, partition, or encumber (except for any transfer or encumbrance to a public utility or for other public purposes consistent with the intended use of such land by or for the benefit of the Lot Owners) all or any part of the land which it owns for such purposes and subject to such conditions as may be agreed to by the Association and the transferee. Such a conveyance shall require the consent of not less than 67% of all Lot Owners independent of the Sponsor who shall vote by written ballot which shall be sent to all Lot Owners and lending institution first mortgagees of Lots not less than 10 days nor more than 50 days in advance of the date or initial date of the canvass thereof. No such conveyance shall be made if lending institutions, which together are first mortgagees on 51% or more of the Lots, advise the Association in writing, prior to the date or initial date set for voting on the proposed conveyance, that they are opposed to such conveyance, which opposition must not be unreasonable;
- d. to enter into agreements, reciprocal or otherwise, with other homeowners' associations, condominiums and cooperatives for the use or sharing of

facilities. Such agreements shall require the consent of the Lot Owners of 67% of the total votes of all Lots voting upon written ballot which shall be sent to every Lot Owner not less than 10 days nor more than 60 days in advance of the date or initial date of the canvass thereof.

- e. to enter into agreements with other homeowner's associations, condominiums and cooperatives for common maintenance, management and other services, materials and supplies.

Section 4.04. Rights of Sponsor. With respect to Association Property and in addition to the rights reserved in Section 4.05 below, so long as the Sponsor holds title to any lot or dwelling unit on lands described in Schedules A and B to this Declaration (whether or not subject to this Declaration), the Sponsor shall have the right to:

- a. grant and reserve easements and rights of way for the installation, maintenance, repair, replacement and inspection of utility lines, wires, coaxial cables, pipes and conduits, including, but not necessarily limited to, water, gas, electric, cable television, telephone and sewer to service any Additional Property as referred to in Section 2.02 of this Declaration;
- b. connect with and make use of utility lines, wires, pipes, conduits and related facilities located on the Association Property for the benefit of any Additional Property;
- c. use the Association Property for ingress and egress to the Property (as described in Section 2.01 of this Declaration) and any Additional Property; and
- d. grant to itself or to others such other easements and rights of way as may be reasonably needed for the orderly development of any Additional Property.

The easements, rights-of-way and other rights reserved herein shall "run with the land" and shall be binding upon and for the benefit of the Association, the Sponsor and their successors and assigns. With respect to its exercise of the above rights, the Sponsor agrees to repair any damages resulting from its use within a reasonable time after the completion of development or when such rights are no longer needed, whichever first occurs. This Section shall not be amended without the written consent of the Sponsor.

Section 4.05. Association's Utility and Conduit Easements. Each Lot shall be subject to an easement in favor of the Owners of other Lots for the maintenance and use of any pipes, wires, coaxial cables, conduits, drainage areas and public utility lines servicing, but not located on, the Lot of such other Owner. The Association (and its employees, contractors and agents) shall, upon reasonable notice to the Owner(s) directly involved, if any, have an easement and right of access to each Unit and Lot for maintenance, repair or replacement of any pipes,

wires, coaxial cables, conduits, drainage areas or public utility lines located on any Lot or within any Unit and servicing two or more Lots. The cost of such repair, maintenance or replacement shall be a common expense funded from the Maintenance Assessments, except that, if occasioned by a negligent or willful act or omission of a specific Lot Owner or Lot Owners, it shall rather be considered a special expense allocable to the Lot Owner or Lot Owners responsible and such cost shall be added to the Maintenance Assessment of such Lot Owner or Lot Owners and, as part of that Assessment, shall constitute a lien on the Lot, or Lots of such Owner or Owners to secure the payment thereof.

The Association (and its employees, contractors and agents) shall, upon reasonable notice to the Lot Owner(s) directly involved, if any, have an easement and right of access over the exterior walls of various Units for the placement, maintenance, repair and replacement of utility banks and telephone pedestals.

Section 4.06. Common Access Easement. The Sponsor and all Lot Owners and their guests, mortgagees, licensees and invitees shall have an easement by vehicle or foot for ingress and egress in common with one another over all walkways, driveways and roadways located on the Association Property and the Association shall have an easement of access to each Lot for the maintenance, repair and replacement of walkways, driveways and roadways or any property or facilities, the maintenance of which is the responsibility of the Association.

Section 4.07. Maintenance of Association Facilities and Improvements. In order to preserve and enhance the property values and amenities of the Association Property, the Association shall at all times maintain the facilities in good repair and condition and shall operate such facilities in accordance with high standards. Any material increase or decrease in the maintenance responsibilities of the Association shall require the consent of the Lot Owners of not less than two-thirds (2/3) of all Lots other than the Sponsor. If the Sponsor holds title to 10% or more of the Lots at the time such increase or decrease is voted upon, the consent of the Sponsor will also be required.

Section 4.08. Right of Association to Contract Duties and Functions. The Association may contract with any person, corporation, firm, trust company, bank, or other entity for the performance of its various duties and functions. Without limiting the foregoing, this right shall entitle the Association to enter into common management and maintenance agreements with other associations, condominiums and cooperatives.

Section 4.09. Environmental Considerations. In carrying out its responsibilities in enforcing the provisions of this Declaration, and in particular the provisions of Articles VII and X herein, the Association and the Architectural Committee shall consider the environmental impact of any existing or proposed activities on the Property or any portion thereof and may, in its discretion, establish standards or guidelines aimed at reducing or eliminating any adverse environmental impact of its activities or take affirmative action to improve the quality of the environment.

Section 4.10. Easements Reserved to Sponsor for Benefit of Additional Property. Easements are reserved herein over all Property covered by this Declaration for the benefit of lands described as Additional Property in Section 2.02 of this Declaration for the following purposes:

- a. ingress and egress over roadways; and
- b. use and connection with utility lines and related facilities including, but not necessarily limited to: telephone, water, gas, electric, sewer and cable television. This easement shall not include the right to consume any water, gas or electricity for which one or more individual Lot Owners are billed directly without the consent of the individual Lot Owners affected.

Upon the connection of lines and/or facilities servicing such land area comprising the Additional Property, should such lands not be added to the scope of this Declaration, such lands shall be responsible for the payment to the Association of a fair share of the cost of operation, maintenance, repair and replacement of those lines and facilities servicing such lands.

Section 4.11. Distribution of Condemnation Awards. In the event all or part of the Association Property is taken in condemnation or eminent domain proceedings, the award from such proceedings shall be paid to the Association. The Board of Directors of the Association shall arrange for the repair and restoration of such Association Property and shall disburse the proceeds of such award to the contractors engaged in such repair and restoration in appropriate progress payments. If there shall be a surplus of such proceeds, or if the Board of Directors shall elect not to repair or restore the Association Property, then the proceeds shall be distributed in the same manner as insurance proceeds, in accordance with Article IX of this Declaration.

The Board of Directors shall promptly send written notice of any pending condemnation or eminent domain proceeding to all institutional first mortgagees of Lots whose names appear on the books or records of the Association.

In the event of any dispute with respect to the allocation of the award, the matter shall be submitted to arbitration in accordance with the arbitration statutes of the State of New York.

Section 4.12. Association's Easement for Maintenance and Repairs. The Association (and its employees, contractors and agents) shall, upon reasonable notice to the Owner(s) directly involved, if any, have an easement and right of access to any portion of the Property, including the Lots and Units, to permit the maintenance, repair or replacement of any property or facilities, the maintenance of which is the responsibility of the Association, except that in any emergency, the Association shall have the right, without notice, to enter upon any portion of the Property, including the Lots and Units, to make necessary repairs or to prevent damage to any portion of the Association Property or any other property for which it is

responsible to maintain, repair or replace as provided for in this Declaration. The repair of any damage caused in gaining access in an emergency shall be at the expense of the Association.

Section 4.13. Hearing Procedures. Where the Board of Directors is required in accordance with the provisions of this Declaration to hold a public hearing prior to taking certain action (hereinafter referred to as a "Hearing"), the procedures set forth in this Section 4.13 (the "Hearing Procedures") shall be followed. The Hearing on the proposed action (the "Proposal") shall be held not less than 20 nor more than 60 days after the Board of Directors has initiated the Proposal. Notices of the Hearing (the "Notice") shall be mailed to all Lot Owners in accordance with Section 12.03 of this Declaration. The Notice shall describe in detail the Proposal, the Hearing Procedures set forth herein as well as any other procedures applicable thereto as may be imposed by other sections of this Declaration, and shall specify the date, time and place of the Hearing. The Hearing will be held on the Property or in a place reasonably accessible to the Property. All Lot Owners and other interested persons shall be entitled, subject only to reasonable rules and regulations established by the Board of Directors for the conduct of such Hearing, to attend the Hearing, to express their views on the Proposal, to ask questions, or to submit written comments with regard to the Proposal. If, in connection with a proposal, a Hearing is required pursuant to more than one section of the Declaration, the Board of Directors may elect to hold one combined Hearing on such Proposal, provided that all restrictions, limitations or additional procedures, if any, imposed by each of the applicable sections are followed.

Section 4.14. Acquisition, Conveyance, Improvement and Changes in Use of Association Facilities. Subject to the limitations set forth in this Section, the Board of Directors of the Association, on such terms and conditions as it deems appropriate, may authorize:

1. the acquisition, through purchase, gift, lease or any combination thereof, of land or improvements or any combination thereof, as Association Property (subject to the obligation of the Board of Directors to accept a conveyance from the Sponsor as set forth in Section 4.01 hereof);
2. the transfer, conveyance, donation, lease or other disposition of any Association Property;
3. the construction of, or the making of additions, modifications or alterations to, or the demolition of, improvements to Association Property;
4. the material change in the use of any Association Property (including, without limitation, construction of improvements so as to convert passive recreational or open space to active recreational use).

Upon the affirmative vote of the Board of Directors proposing any of the above, the Board of Directors shall hold a Hearing on the Proposal in accordance with the Hearing Procedures set forth in Section 4.13 hereof.

Not less than 15 nor more than 45 days after the Hearing, the Board of Directors shall vote on the Proposal, with such modifications thereto as it deems appropriate after due consideration of the written and oral comments received at the Hearing. An affirmative vote of not less than three-fourths (3/4) of the entire Board of Directors shall be required for approval; provided, however, that any material change in use shall not be in violation of the zoning laws or any other laws, ordinances, rules or regulations of the Town of Ellicottville or any other governmental authority.

If a proposed acquisition of land or improvements or the construction, addition, modification, alteration to, or the demolition of Association Property, will result in the imposition of a Special Assessment as provided in Section 5.04 of this Declaration, the Board of Directors shall hold a Hearing thereon in accordance with the Hearing Procedures set forth in Section 4.13 hereof, and the provisions of Section 5.04, prior to finally authorizing such action.

The Board of Directors shall obtain the approval of the Architectural Committee as provided in Article VII hereof prior to:

1. the making of an addition, modification or alteration to Association Property; or
2. the demolition of any improvement on Association Property; or
3. the authorizing of a material change in use of Association Property.

Notwithstanding the provisions of this Section, the decision of the Board with respect to any proposal may not be contrary to the position of Owners of 51% or more of the Lots, expressed in a written petition or petitions signed by such Owners and delivered to the Board prior to its scheduled vote in the proposal.

Section 4.15. Damage Resulting from Use of Easement. Any damage to any Lot or other portion of the Property or to any improvements thereon as a result of any act or work performed pursuant to the authority granted in this Article IV, or as a result of the use of any easement granted or reserved herein, shall be promptly (except as provided in Section 4.04 above) repaired, replaced or corrected as necessary by the person or entity performing the act or work and/or by the grantee or holder of the easement being exercised, at the cost and expense of such person or entity (except as provided in Section 4.05 above), so that any such damage will be restored or replaced to the condition in which it existed immediately prior to the damage.

Section 4.16. Parking. The Association may designate parking spaces for the use of each Lot Owner and such Lot Owners guests.

ARTICLE V ASSESSMENTS AND RIGHT OF ASSOCIATION TO BORROW

Section 5.01. Imposition, Personal Obligation, Lien. Each Lot Owner, by becoming an Owner by the acceptance of a deed or otherwise, whether or not such deed or any other instrument pursuant to which title was obtained so provides, shall be deemed to covenant and agree to pay to the Association:

- a. annual assessments or charges for the maintenance and operation of Association Property ("Maintenance Assessments"); and
- b. special assessments for capital improvements ("Special Assessments"); together hereinafter being referred to as "Assessments".

The Assessments shall be fixed, established and collected from time to time as hereinafter provided. Each Assessment (or installment payment thereof) together with such late charges, interest thereon and costs of collection as hereinafter provided, shall be a charge and continuing lien upon the Lot against which the Assessment is made and shall also be the personal obligation of the Owner of such Lot at the time the Assessment falls due.

Unless otherwise agreed upon between the parties to the transfer upon the transfer of a Lot, Association Maintenance Assessments and any Special Assessments which (i) may be payable in installments or (ii) are specifically applicable to a defined period of time, shall be adjusted between the grantor and grantee, with the grantor being entitled to a credit from the grantee for the portion of any payment made by the grantor which is applicable to the remainder of the period in which the transfer occurred or to a subsequent period and grantee being entitled to a credit from the grantor for the portion of any payment assumed by the grantee which is applicable to the expired portion of the period in which the transfer occurred or to any prior period. Special Assessments payable in installments shall, unless otherwise provided by the Board of Directors of the Association in the adoption of the Assessment, be adjusted as if the payment due was for a period following the date due, equal to the interim period between installments.

Section 5.02. Purpose of Maintenance Assessment. The purpose of the Maintenance Assessment shall be to fund (i) the maintenance, preservation, operation and improvement of the Association Property and the promotion of the recreation, safety and welfare of the Lot Owners, including but not limited to, the payment of taxes on Association Property, any utility services to the Property which are commonly metered or billed, all casualty, liability and other insurance obtained pursuant to Article IX of this Declaration; (ii) the maintenance, repair and replacement of all facilities commonly servicing the Lot Owners, whether on or off the Lots, such as parking areas and landscaped areas; (iii) the maintenance, repair and replacement of the Unit exteriors - siding, roofs, gutters, fences, patios, walkways and the painting of exterior trim; (iv) the exterior of doors and windows which open from the Unit (but not glass replacement), and the cost of labor, equipment, materials, management and supervision for all of the above; and (v) such other needs as may arise. As provided in Section 4.07 of this Declaration, any material increase or decrease in the maintenance responsibilities of the Association shall require the consent of the Owners of not less than two-thirds (2/3) of all Lots

other than the Sponsor, as well as the Sponsor, if the Sponsor holds title to 10% or more of the Lots at the time such increase or decrease is voted upon. The amount of any reserves shall be not less than the reasonable requirements of existing or proposed lenders, holders and insurers of first mortgages on the Lots.

Section 5.03. Basis for Maintenance Assessment. The annual Maintenance Assessment chargeable to each Lot assessed shall be the same for all Lots, so that the annual Maintenance Assessment for each Lot shall be determined each year by dividing the number of Lots liable for the payment of Maintenance Assessment pursuant to Section 5.01 above, into the total amount which the Board of Directors shall deem to be necessary to fully fund the current budget of estimated expenses and reserves (and any operating deficits previously sustained).

Section 5.04. Special Assessments for Capital Improvements. In addition to the annual Maintenance Assessment, the Association may levy in any assessment year a Special Assessment, payable in that year and/or the following year only, for the purpose of defraying, in whole or in part, the cost of any capital improvements, including without limitation, the construction, reconstruction or replacement of, or repair of a capital nature to, the Association Property or to any Property on the Lots which the Association has the responsibility to maintain, including the necessary fixtures and personal property related thereto. Before levying such a Special Assessment the Board of Directors shall hold a Hearing on said proposed Special Assessment in accordance with the Hearing Procedure set forth in Section 4.13 of this Declaration. Not less than 10 nor more than 45 days after such Hearing, the Board of Directors shall (i) for any Special Assessment for the construction (rather than the reconstruction or replacement) of any capital improvement, and for any Special Assessment amounting to more than 20% of the then current amount of annual Maintenance Assessments, obtain the consent of two-thirds (2/3) of the total votes of Lot Owners who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all voting Lot Owners at least 30 days in advance, setting forth the purpose of the meeting, and (ii) for any Special Assessment whether for the full amount proposed or for a lesser amount, obtain the approval of not less than three-fourths (3/4) of the entire Board of Directors. The Association shall establish one or more due dates for each payment or partial payment of each Special Assessment and shall notify each Owner thereof in writing at least 30 days prior to the first such due date.

Section 5.05. Date of Commencement and Notice of Assessments. The Assessments provided for herein shall commence on the day on which the first Lot is conveyed or on such date thereafter as determined by the Sponsor. The first Assessments shall be adjusted according to the number of months remaining in the fiscal year as established by the Board of Directors and such Assessments shall thereafter be on a full year basis. The Board of Directors of the Association shall fix the amount of the Assessment against each Lot at least 30 days in advance of each annual Assessment period. The Assessments shall be due and payable monthly unless the Board of Directors establishes other installments for payment, which installments may or may not be equal. Separate due dates may be established by the Board for partial annual Assessments as long as said Assessments are established at least 30 days before due. Written

notice of the annual Assessments shall be sent to every Lot Owner subject thereto. Should the Board of Directors determine at any time that the Assessments are insufficient to fully fund the then current year's expenditures, the Board may assess additional amounts on a pro rata basis to all Lot Owners.

Section 5.06. Assessments for Specific Lots. Once Assessments have commenced pursuant to Section 5.05 above, the Lot Owner of each Lot subject to this Declaration shall be liable for the payment of full Maintenance Assessments and Special Assessments, if any, except that with respect to Maintenance Assessments, the Sponsor will only be obligated for the lesser of (i) the difference between the actual Association expenses (including budgeted amounts for reserves) and the Association charges levied on Lot Owners who have closed title to their Lots as projected in the offering plan filed with the New York State Department of Law pursuant to which interests in the Association were initially offered for sale; or (ii) Maintenance Assessments on all unsold Lots. The Sponsor will be responsible for Special Assessments on all unsold Lots.

Section 5.07. Change in Basis of Assessments. The Association may change the basis of determining the Maintenance Assessment by obtaining the written consent of not less than 67% of the total votes of all Lot Owners, excluding the Sponsor, voting in person or by proxy, written notice of which change shall be sent to all Lot Owners and lending institution first mortgagees of Lots whose names appear on the records of the Association at least 40 days in advance of the date or initial date set for voting thereon, except that: (i) so long as the Sponsor holds title to any subdivision lot or dwelling unit on lands described in Schedules A or B to this Declaration (whether or not subject to this Declaration), any change in the basis of Assessments which adversely affects a substantial interest or right of the Sponsor with respect to unsold dwelling units or subdivision lots containing unsold dwelling units shall require the specific consent of the Sponsor in writing, which consent shall not be unreasonably withheld, and (ii) no such change shall be made if lending institutions which together are first mortgagees on 51% or more of the Lots advise the Association in writing, prior to the date or initial date set for voting on the proposed change, that they are opposed to such change, which opposition must not be unreasonable. A written certification of Any such change shall be executed by the Board of Directors and recorded in the Office of the Clerk of the County of Cattaraugus as an amendment to this Declaration.

Any change in the basis of Assessments shall be equitable and nondiscriminatory within the following classifications: (i) Lots paying full Maintenance Assessments, and (ii) Lots paying less than full Maintenance Assessments pursuant to Sections 5.02 and 5.06 above.

Section 5.08. Non-Payment of Assessment. If an Assessment, or installment thereof, is not paid on the due date, established pursuant to Section 5.03 hereof, then such Assessment payment shall be deemed delinquent. Any delinquent Assessment payment, together with such interest thereon, accelerated installments, if any, and cost of collection thereof as herein provided, shall thereupon become a continuing lien on the Lot which shall bind such Lot in the hands of the then Lot Owner and such Lot Owner's heirs, devisees, personal

representatives, successors and assigns. In addition to the lien rights, the personal obligation of the then Lot Owner to pay such Assessment shall remain such Lot Owner's personal obligation and shall not pass to such Lot Owner's successors in title unless expressly assumed by them.

If the Assessment or any installment thereof is not paid within 10 days after the due date, the Association may impose a late charge or charges in such amount or amounts as the Board of Directors deems reasonable, not to exceed 10% of the amount of such overdue Assessment or installment thereof, provided such late charges are equitably and uniformly applied.

If the Assessment or any installment thereof, is not paid within 30 days after the due date, (i) the Assessment shall bear interest from the due date at such rate as may be fixed by the Board of Directors from time to time, such rate not to exceed the maximum rate of interest then permitted by law, (ii) the Board of Directors may accelerate the remaining installments, if any, of such Assessment upon notice thereof to the Lot Owner and (iii) the Association may bring legal action against the Lot Owner personally obligated to pay the same or foreclose the lien against the Lot of such Lot Owner, and the cost of such proceedings, including reasonable attorneys' fees, shall be added to the amount of such Assessments, accelerated installments, if any, late charges and interest.

Once an Assessment is deemed delinquent as described above, any payments received from the Lot Owner shall be applied in the following order: attorneys' fees, other costs of collection, late charges, interest, and then the delinquent Assessment or installments thereof beginning with the amounts past due for the longest period.

Dissatisfaction with the quantity or quality of maintenance services furnished by the Association shall, under no circumstances, entitle any Lot Owner to withhold or fail to pay the Assessments due to the Association for the Lot or Lots owned by such Lot Owner.

Section 5.09. Notice of Default. The Board of Directors, when giving notice to a Lot Owner of a default in paying Assessments, may, at its option, or shall, at the request of a mortgagee, send a copy of such notice to each holder of a mortgage covering such Lot whose name and address appears on the Board's records. The mortgagee shall have the right to cure the Lot Owner's default with respect to the payment of said Assessments.

Section 5.10. Right to Maintain Surplus. The Association shall not be obligated in any calendar year to spend all the sums collected in such year by way of Maintenance Assessments or otherwise, and may carry forward as surplus any balances remaining; nor shall the Association be obligated to apply any such surpluses to the reduction of the amount of the Maintenance Assessments in the succeeding year, but may carry forward from year to year such surplus as the Board of Directors in its absolute discretion may determine to be desirable for the greater financial security and the effectuation of the purposes of the Association.

Section 5.11. Assessment Certificates. Upon written demand of the Lot Owner or lessee of a Lot (or any prospective purchaser, lessee, occupant, mortgagee or title insurer of such Lot), the Association shall, within a reasonable period of time, issue and furnish a certificate in writing signed by an officer or designee of the Association setting forth with respect to such Lot as of the date of such certificate, (i) whether the Assessments, if any, have been paid; (ii) the amount of such Assessments, including interest and costs, if any, due and payable as of such date; and (iii) whether any other amounts or charges are owing to the Association, ~ for the cost of extinguishing a violation of this Declaration. A reasonable charge, as determined by the Board of Directors, may be made for the issuance of such certificates. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and any bona fide purchaser, lessee or title insurer of, or lender, on the Lot on which such certificate has been furnished.

Section 5.12. Subordination of Assessment Lien to Mortgages. The lien of the Assessments provided for herein shall be subordinate to the lien of any bona fide first mortgage of record now or hereafter placed upon any Lot subject to such Assessments; provided, however, that such subordination shall apply only to the Assessments which have become due and payable prior to a sale or transfer of such Lot pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve the Owner of such Lot from liability for any Assessments thereafter becoming due, nor relieve such Lot from the lien of any such subsequent Assessment.

Section 5.13. Adjustment of Assessments on Transfer. Unless otherwise agreed upon between the parties to the transfer, upon the transfer of a Lot, Maintenance Assessments and any Special Assessments which (i) may be payable in installments or (ii) are specifically applicable to a defined period of time which has not expired, shall be adjusted between the grantor and grantee, with the grantor being entitled to reimbursement from the grantee for the portion of any payment made by the grantor which is applicable to the remainder of the period in which the transfer occurred or to a subsequent period, and the grantee being entitled to a credit from the grantor for the portion of any unpaid payment assumed by the grantee which is applicable to the expired portion of the period in which the transfer occurred or to any prior period. Unless otherwise provided by the Board of Directors of the Association in its adoption, (i) a Special Assessment payable in installments shall be adjusted as if the installment payments apply to a period following the date due, the length of which shall be equal to the interim period between installation due dates and (ii) a Special Assessment payable in a single installment shall be the sole responsibility of the Owner of the unit on the date which such Assessment is initially due.

Section 5.14. Right to Borrow and Mortgage. In order to fulfill the purposes set forth herein, the Association may borrow funds from any recognized lending institution, and in conjunction therewith mortgage its properties. The amount, terms, rate or rates of all borrowing and the provisions of all agreements with note holders shall be subject solely to the decision of the Board of Directors acting in its absolute discretion, except that (i) any member of the Board of Directors of the Association who has been elected or appointed by the Sponsor shall not be

permitted to vote affirmatively for any borrowing and the quorum of the Board of Directors in any such vote shall be a majority of those Directors not elected or appointed by the Sponsor, and (ii) any consent of the Sponsor as required by Section 3.12 of this Declaration must be obtained.

Section 5.15. Repayment of Monies Borrowed. In order to secure the repayment of any and all sums borrowed from time to time, the Association is hereby granted the right and power:

- a. to assign and pledge all revenues received and to be received by it under any provision of this Declaration including, but not limited to, the proceeds of the Maintenance Assessments hereunder; and
- b. to enter into agreements with note holders with respect to the collection and disbursements of funds, including, but not limited to, agreements wherein the Association covenants to:
 1. assess the Maintenance Assessments on a given day in each year and, subject to the limitation on amount specified in Section 5.03 hereunder, to assess the same at a particular rate or rates;
 2. establish sinking funds and/or other security deposits;
 3. apply all funds received by it first to the payment of all principal and interest on such loans, when due, or to apply the same to such purpose after providing for costs of collection;
 4. establish such collection, payment and lien enforcement procedures as may be required by the note holders; and
 5. provide for the custody and safeguarding of all funds received by it,

ARTICLE VI MAINTENANCE

Section 6.01. Maintenance and Repair by the Association. Except as specifically otherwise provided in this Section 6.01, all maintenance and repair of and replacements to the improvements on Association Property, the maintenance, repair and replacement of all roadways and walkways on the Property, snow removal from all roadways on the Property, (whether or not such areas are on Association Property) and the maintenance of all landscaped areas shall be the responsibility of, and at the cost and expense of the Association. Maintenance, repair and replacement of pipes, wires, conduits and public utility lines servicing two (2) or more Units and for which a utility company or other entity is not responsible (whether or not such lines and facilities are on Association Property) shall also be the responsibility of, and an expense of, the Association.

The Association shall be responsible for the maintenance of all shrubbery and other plantings installed by the Sponsor or the Association on the Association Property, or by the Association on the Lots, installed by or at the direction of the Sponsor or the Association but not for shrubbery, flower beds or other plantings installed by or at the direction of any Lot Owner or Unit occupant.

Units. With respect to the Units, the Association shall repair and replace the exterior siding, gutters and roofs, paint the exterior trim and the exterior of windows, doors, and garage doors which open from a Unit and caulk the windows, but shall not (i) repair or replace window panes or (ii) maintain, repair or replace doors or (iii) maintain, repair or replace garage doors, garage door hardware, tracks or openers.

Other Lot Improvements. With respect to the other improvements on the Lots, the Association shall repair and replace all walkways.

The Association may increase (or decrease) its maintenance responsibilities, to maintain, repair and replace as necessary the roofs and gutters to the Units, or to paint or stain as necessary Unit exteriors, trim, windows and doors, provided (i) such increase or decrease is approved in writing by two-thirds (2/3) of all Owners other than the Sponsor and (ii) if such increase or decrease is proposed while the Sponsor holds title to any lands described in Schedules A or B to this Declaration (whether or not subject to this Declaration) the written consent of the Sponsor will be required.

Any responsibility for maintenance, repair or replacement with respect to the Lots and Units which is not the responsibility of the Association is the responsibility and shall be made at the cost and expense of the respective Owner(s) of such Lots or Units.

Subject to the provisions of Section 6.02 below, the cost of all maintenance performed by the Association shall be funded from Maintenance Assessments.

The Association shall have an easement and right of access for maintenance and repairs as set forth in Section 4.12 of this Declaration.

Section 6.02. Repairs and Maintenance Which Are Not the Responsibility of the Association. Any maintenance, repair or replacement necessary to preserve the appearance and value of the Property made pursuant to Section 6.01 above but which is occasioned by a negligent or willful act or omission of a Lot Owner (including: (1) any family member, tenant, guest or invitee of such Owner, (2) any family member, guest or invitee of the tenant of such Owner, and (3) any guest or invitee of (i) any member of such Owner's family, or (ii) any family member of the tenant of such Owner) or the Sponsor shall be made at the cost and expense of such Lot Owner or the Sponsor, as the case may be. If such maintenance, repair or replacement is performed by the Association, it shall not be regarded as a common expense, but shall rather be considered a special expense allocable to the specific Unit or Lot and such cost shall be added

to that Lot Owner's Maintenance Assessment and, as part of that Assessment, shall constitute a lien on the Lot to secure the payment thereof.

Section 6.03. Quality and Frequency of Maintenance and Repairs. All maintenance, repair and replacement, whether or not performed by the Association, shall be of a quality and appearance consistent with the enhancement and preservation of the appearance and value of the Property. The Association may establish reasonable schedules and regulations for maintenance, repair and replacement of Property which it is obligated to maintain, repair or replace pursuant to Section 6.01, which schedules and regulations shall take into account the useful life of any painting and exterior materials and the enhancement and preservation of the appearance and value of such Property.

ARTICLE VII ARCHITECTURAL CONTROLS

Section 7.01. Control by Association. After transfer of title by the Sponsor to any Lot or other completed portion of the Property, enforcement of those provisions of the Declaration pertaining to exterior appearance of the Property and control over any change in use or any additions, modifications or alterations to any exterior improvement on said Lot or other portion of the Property shall be the responsibility of the Association, acting through the Architectural Standards Committee as provided in Section 7.02 below.

Section 7.02. Composition and Function of Architectural Standards Committee. The Architectural Standards Committee (the "Architectural Committee") shall be a permanent committee of the Association and shall (i) approve all proposed additions, modifications or alterations to any improvements or any proposed change in the use of a Lot or any other portion of the Property (including Association Property) after transfer of title to such Lot or other portion of the Property and (ii) enforce those provisions of the General Covenants and Restrictions set forth in Article X of this Declaration pertaining to the exterior appearance and use of the Property as specifically set forth in Article X. The Architectural Committee may also assist and advise the Board of Directors of the Association in enforcing the Declaration and in advertising and publishing rules, regulations and guidelines, and may from time to time perform such other duties or functions as may be assigned to it by the Board of Directors. The Architectural Committee shall be composed of three or more persons (as determined by the Board of Directors of the Association) for terms of two (2) years, but shall be subject to removal, with or without cause, by the affirmative vote of not less than two-thirds (2/3) of the members of the Board of Directors.

Section 7.03. Submission of Plans to Architectural Committee. After transfer of title to any Lot or other portion of the Property by the Sponsor, no exterior addition, modification or alteration, including change of color, shall be made on or to such Lot or other portion of the Property or to the improvements located thereon, unless and until a plan or plans therefore, in such form and detail as the Architectural Committee requires, have been submitted to, and

reviewed and approved by, the Architectural Committee. The Architectural Committee may charge and collect a reasonable fee for the examination of plans submitted for approval.

Section 7.04. Basis for Disapproval of Plans by Architectural Committee. The Architectural Committee may disapprove any plans submitted pursuant to Section 7.03 above for any of the following reasons

- a. failure of such plans to comply with any protective covenants, conditions and restrictions contained in the Declaration and which benefit or encumber the Lot or other portion of the Property;
- b. failure to include information in such plans as requested;
- c. objection to the site plan, exterior design, appearance or materials of any proposed improvements, including without limitation, colors or color scheme, finish, proportion, style of architecture, proposed parking, height, bulk or appropriateness;
- d. incompatibility of proposed improvements or use of proposed improvements with existing improvements or uses in the vicinity;
- e. failure of proposed improvements to comply with any zoning, building, health, or other governmental laws, codes, ordinances, rules and regulations;
- f. any other matter which in the judgment and sole discretion of the Architectural Committee would render the proposed improvements, use or uses, inharmonious or incompatible with the general plan of improvement of the Property or portion thereof or with improvements or uses in the vicinity.

Section 7.05. Approval of Architectural Committee. Upon approval or qualified approval by the Architectural Committee of any plans submitted pursuant to Section 7.03 above, the Architectural Committee shall notify the applicant in writing of such approval or qualified approval, which notification shall set forth any qualifications or conditions of such approval, shall file a copy of such plans as approved for permanent record (together with such qualifications or conditions, if any), and, if requested by the applicant, shall provide the applicant with a copy of such plans bearing a notation of such approval or qualified approval. Approval of any such plans relating to any Lot or portion of the Property shall be final as to such Lot or portion of the Property and such approval may not be revoked or rescinded thereafter provided (i) the improvement or uses approved are not substantially changed or altered; (ii) that the improvements or uses shown or described on or in such plans do not violate any protective covenants, conditions or restrictions set forth in this Declaration which benefit or encumber the Lot or portion of the Property, and (iii) that such plans and any qualifications or conditions

attached to such approval of the plans do not violate any applicable governmental law, rule or regulation, zoning, building, health or other code or ordinance. Approval of any plans for use in connection with any Lot or portion of the Property shall not be deemed a waiver of the right of the Architectural Committee to disapprove similar plans or any of the features or elements included therein if such plans, features or elements are subsequently submitted for use in connection with any other Lot or portion of the Property.

Section 7.06. Written Notification of Disapproval. In any case where the Architectural Committee disapproves any plans submitted hereunder, the Architectural Committee shall so notify the applicant in writing together with a statement of the grounds upon which such action was based as set forth in Section 7.04. In any such case, the Architectural Committee shall, if requested and if possible, make reasonable efforts to assist and advise the applicant so that acceptable plans can be prepared and resubmitted for approval.

Section 7.07. Failure of Committee to Act. If any applicant has not received notice of the Architectural Committee approving or disapproving any plans within 35 days after submission thereof; said applicant may notify the Committee in writing of that fact. Such notice shall be sent by certified mail, return receipt requested. The plans shall be deemed approved by the Committee not later than the later of:

- a. 15 days after the date of receipt of such second notice, if such second notice is given;
- b. 70 days after the date the plans were originally submitted.

Section 7.08. Committee's Right to Promulgate Rules and Regulations. Subject to the provisions of Section 7.12 below, the Architectural Committee may from time to time promulgate rules and regulations governing the form and content of plans to be submitted for approval or with respect to the approval or disapproval of certain types of alterations, additions or modifications to improvements, or uses; provided, however, that no such rule or regulation shall be deemed to bind the Architectural Committee to approve or disapprove any plans submitted for approval, or to waive the exercise of the Committee's discretion as to such plans, and provided further that no such rule or regulation shall be inconsistent with the provisions of the Declaration or any applicable governmental law, code, ordinance, rule or regulation.

Section 7.09. Delegation of Functions. The Architectural Committee may authorize its staff, subcommittees, or individual members of the Architectural Committee to perform any or all of the functions of the Committee as long as the number and identity of such staff or members, the functions and scope of authority have been established by a resolution of the entire Architectural Committee. The approval or disapproval of plans by the staff member, individual member or subcommittee will be subject, however, to the reasonable review of the Architectural Committee, in accordance with procedures to be established by the Committee.

Section 7.10. Records of Meetings; Regulations. The Architectural Committee shall keep minutes of meetings and maintain records of all votes taken at meetings. The Architectural Committee shall make such records and current copies of its rules and regulations available at reasonable place and times for inspection by all persons.

Section 7.11. Liability of Architectural Committee. No action taken by the Architectural Committee or any member, subcommittee, employee or agent hereof, shall entitle any person to rely thereon, with respect to conformity with laws, regulations, codes or ordinances, or with respect to the physical or other condition of any Lot or other portion of the Property. Neither the Association nor the Architectural Committee, nor any member, subcommittee, employee or agent shall be liable to anyone submitting plans to them for approval or to any Lot Owner, member, or any other person, in connection with any submission of plans, or the approval or disapproval thereof, including without limitation, mistakes in judgment, negligence or nonfeasance. Every person or other entity submitting plans to the Architectural Committee agrees, by submission of such plans, that no action or suit will be brought against the Association or the Architectural Committee (or any member, subcommittee, employee or agent thereof) in connection with such submission.

Section 7.12. Architectural Committee Certificate. Upon written request of any Owner, lessee or occupant (or any prospective Owner, lessee, mortgagee, or title insurer) of a Lot or other portion of the Property, title to which has been previously transferred from the Sponsor, the Architectural Committee shall, within a reasonable period of time, issue and furnish to the person or entity making the request, a certificate in writing ("Architectural Committee Certificate") signed by a member of the Architectural Committee stating, as of the date of such Certificate, whether or not the Lot or other portion of the Property, or any improvements thereon, violates any of the provisions of the Declaration pertaining to exterior appearance, design or maintenance and describing such violations, if any. A reasonable charge, as determined by the Architectural Committee, may be imposed for issuance of such Architectural Committee Certificate. Any such Architectural Committee Certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and the party to whom such Certificate was issued.

Section 7.13. Restrictions on Change of Architectural Controls, Rules or Regulations. The controls set forth in this Article VII and any rules or regulations shall not, by act or omission, be changed, waived or abandoned, unless consented to in writing by not less than 67% of the total votes of all Lot Owners (excluding the Sponsor) voting in person or by proxy, written notice of which change shall be sent to all Lot Owners and lending institution first mortgagees of Lots whose names appear on the records of the Association at least 30 days in advance of the date or initial date set for voting thereon and shall set forth the purpose of the vote. In addition, any such change, waiver or abandonment shall not be made if lending institutions which together are first mortgagees of 51% or more of the Lots advise the Association in writing, prior to the date or initial date set for voting on the proposed charge, waiver or abandonment, that they are opposed to such action, which opposition must not be unreasonable.

**ARTICLE VIII
PARTY WALLS AND ENCROACHMENTS**

Section 8.01. Party Walls. A wall shall be considered a party wall where all of the following conditions are met:

- a. the wall is built as part of the original construction of the Units; and
- b. the wall is an interior wall of a Building; and
- c. the wall serves as a common wall of two adjoining Units, whether or not the wall is on the dividing line between such Units.

Section 8.02. Maintenance of Party Walls. Each Lot Owner whose Lot contains a party wall shall have an easement to enter upon the Lot and within the Unit with which the party wall is shared to effect necessary repairs or maintenance of such party wall. Each Owner shall be responsible for the ordinary maintenance and repair of such Owner's respective side of a party wall. If it shall become necessary to make substantial repairs to or rebuild a party wall, the cost of such repairing or rebuilding shall be borne equally by the Owners of the two (2) Units which share such wall.

In any event where it is necessary for a Lot Owner (or said Owner's authorized employees, contractors or agents) to enter upon a Lot or within a Unit owned by another for purposes of maintaining a party wall, such right shall be exercised upon reasonable notice to the adjoining Owner, shall be limited to reasonable times, and shall be exercised so as not to unreasonably impair the right of the adjacent Owner to the use and quiet enjoyment of said adjacent Unit.

Section 8.03. Exposure of Wall. A Lot Owner who, by negligent or willful act causes the party wall to be exposed to the elements, shall bear the whole cost of furnishing the necessary protection against, and the necessary repair caused by, such elements.

Section 8.04. Materials Used. If and when any party wall is repaired or rebuilt, it shall stand upon the same place and be of the same or similar materials as the original wall.

Section 8.05. Destruction of Party Wall. In the event of destruction of a party wall by fire or other casualty, to the extent that such damage is not repaired out of the proceeds of the insurance covering the hazard, the Owner of any Unit which used the wall may restore it. The Owner who undertakes such restoration shall be entitled to a contribution (equaling one-half (1/2) the cost of such restoration) from the Owner of the other Unit which shares such wall. Such right to contribution shall not be construed, however, to limit in any degree, the right of an Owner to seek a greater contribution if so entitled under the law of the State of New York regarding liability for negligent or willful acts or omissions.

Section 8.06. Encroachments or Projections. If any Unit encroaches or projects up to two (2) feet upon or over any other Unit or Lot or upon or over any portion of the Association Property or if any deck or patio servicing a Unit encroaches or projects upon or over any portion of the Association Property as a result of: (i) original construction, (ii) settling or shifting, or (iii) replacement, as a result of fire, condemnation, eminent domain proceedings or proceedings of similar import and effect; such encroachment or projection shall be permitted and a valid easement for such encroachment or projection and the maintenance thereof shall exist so long as such improvements shall stand. If such encroachment or projection occurs as a result of replacement, the encroachment or projection must be inadvertent in order for a valid easement to exist.

Section 8.07. Party Wall Rights Run With the Land. The rights of support, quiet enjoyment, entry to repair or restore and contribution for the cost of the same which are described in this Article shall run with the land and shall bind the heirs, successors and assigns of each Lot Owner.

ARTICLE IX INSURANCE AND RECONSTRUCTION

Section 9.01. Insurance to be Carried. The Board of Directors of the Association shall obtain and maintain, and with such deductible amounts as the Board of Directors shall deem appropriate: (1) fire and casualty insurance, (including flood insurance if required for the mortgaging of individual Units) (2) liability insurance for occurrences on the Association Property, (3) directors' and officers' liability insurance covering wrongful acts of officers and directors of the Association, (4) fidelity bond covering those who handle Association funds, and (5) workers' compensation insurance covering Association employees and those who perform work for the Association as follows:

1. Fire and Casualty. The policy shall cover the interests of the Association, the Board of Directors and all Unit Owners and mortgagees as their interests may appear. Coverage shall be for the full replacement value, if available, (without deduction for depreciation) of all improvements on the Property under the "single entity" concept, i.e. covering the Units as initially built and including the wall to wall carpeting, lighting fixtures, bathroom fixtures, kitchen appliances, wall coverings, and all machinery servicing the Units and common facilities, and, at the option of the Board of Directors, improvements and betterments (including upgrading of appliances, kitchen cabinets, carpeting, and lighting fixtures, etc. made by present or prior Lot or Unit Owners or occupants, excluding (i) the land and foundations, (ii) the personal property of Lot Owners and occupants.

The policy shall have the following provisions, endorsement and coverages: (i) extended coverage, including sprinkler leakage (if applicable), debris removal, cost of demolition, vandalism, malicious mischief, windstorm and water damage, (ii) inflation guard, (iii) coverage for loss of maintenance assessments from Lot Owners forced to vacate because of fire or other insured against casualty, (iv) waiver of any right to claim by way of subrogation

against individual Lot Owners and the members of their household and families, the Association, the officers and directors of the Association, and the managing agent, if any, for the Association, (v) an exclusion from the "no other insurance" clause of individual Lot Owners' policies so that the insurance purchased by the Board of Directors shall be deemed primary coverage and any policies obtained by individual Lot Owners or mortgagees shall be deemed excess coverage and that the insurance obtained by the Board of Directors shall in no event be brought into "contribution" with insurance purchased by individual Lot Owners or mortgagees, (vi) a provision that the policy cannot be cancelled, invalidated or suspended because of the act or neglect of someone over whom the insured has no control, (vii) cross-liability giving the Lot Owners the right to sue the Board of Directors and vice versa with the insuring company agreeing to defend the defendant, (viii) a provision that the policy may not be cancelled (including cancellation for nonpayment of premium), substantially modified, invalidated or suspended, without at least 30 days prior written notice to all of the insured, including all mortgagees of Lots reported to the insurance carrier or its agent, (ix) a provision requiring periodic review at least every two years to assure the sufficiency of coverage and (x) a provision that adjustment of loss shall be made by the Board of Directors.

Prior to obtaining any new fire and casualty insurance policy, the Board of Directors shall obtain an appraisal from an insurance company or from such other source as the Board of Directors shall determine to be acceptable as to the full replacement value (without deduction for depreciation) of the improvements on the Property (exclusive of land and foundations) for the purpose of determining the amount of fire and casualty insurance to be effected pursuant to this Section.

Flood Insurance. If any portion of the Property is located in an area identified by the Federal Secretary of Housing and Urban Development as having special flood hazards, the Board of Directors shall obtain, if available, a policy of flood insurance covering the Units and other insurable improvements on the Property or portion thereof located entirely or partially in the flood hazard area. Such coverage shall be the maximum coverage available under the National Flood Insurance Program or 100% of the current replacement cost of all such Units and other insurable property, whichever is less.

The proceeds of all policies of physical damage insurance, if \$60,000.00 or less, shall be payable to the Association, and if \$60,000.00 or more, to an insurance trustee (bank, trust company or law firm) selected by the Board of Directors of the Association to be applied for the purpose of repairing, restoring or rebuilding unless otherwise determined by the Lot Owners pursuant to Section 9.02 of this Declaration. This \$60,000.00 limitation shall increase automatically by 5% each calendar year after the year in which this Declaration is recorded and may be further raised or lowered from time to time upon approval of not less than two-thirds (2/3) of the entire Board of Directors. All fees and disbursements of the insurance trustee shall be paid by the Association and shall be a common expense of all Lot Owners.

The policy shall contain the standard mortgagee clause in favor of mortgagees which shall provide that any loss shall be payable to a mortgagee as its interest shall appear;

4. Fidelity Bond. The fidelity bond shall cover all directors, officers and employees of the Association and the Association's managing agent, if any, who handle Association funds. The bond shall name the Association as obligee and be in an amount not less than a sum equal to three months' aggregate assessments on all Lots, plus the amount of reserves and other funds on hand. It shall contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee" or similar expression, and shall provide that the bond may not be cancelled or substantially modified (including cancellation for non-payment of premium) without at least 30 days' prior written notice to the Association and to all institutional first mortgagees of Lots whose names appear on the records of the Association.

The Board of Directors shall, at the request of any Lot Owner, Lot mortgagee, or prospective Lot Owner or Lot mortgagee, increase the amount of such bond to meet the reasonable requirements of any existing or proposed holder or insurer of any mortgage made or to be made on any Lot.

5. Workers' Compensation. To the extent deemed reasonable and necessary by the Board of Directors, workers' compensation insurance shall be obtained. Such insurance shall cover any employees of the Association, as well as any other person performing work on behalf of the Association.

Other Insurance. The Board of Directors may also obtain such other insurance as it shall deem necessary or desirable from time to time including "umbrella" catastrophe coverage.

No Liability for Failure to Obtain Above Coverages. The Board of Directors shall not be liable for failure to obtain any of the coverages required by this Section or for any loss or damage resulting from such failure if such failure is due to the unavailability of such coverages from reputable insurance companies, or if such coverages are so available only at demonstrably unreasonable cost.

Deductible. The deductible, if any, on any insurance policy purchased by the Board of Directors shall be a common expense, provided, however, that the Board of Directors of the Association may assess any deductible amount necessitated by the gross negligence or wantonly malicious act of an Owner against such Owner. The Association may pay the deductible portion for which such Owner is responsible, and the amount so paid, together with interest and costs of collection (including attorney's fees), shall be a charge and continuing lien upon the Lot involved, shall constitute a personal obligation of such Owner, and shall be collectible in the same manner as Assessments under Article V of this Declaration.

Section 9.02. Restoration or Reconstruction After Fire or Other Casualty. In the event of damage to or destruction of any Unit or Units, insured through insurance obtained by the Board of Directors, as a result of fire or other casualty, the Board of Directors shall notify all mortgagees of such Unit or Units as indicated on the records of the Association and shall arrange

for the prompt repair and restoration of the damaged property and the Board of Directors, or the Insurance Trustee, as the case may be, shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments; provided, however, that if three-fourths (3/4) or more of the Units in a building are destroyed or substantially damaged and the Owners of 75% or more of all Lots and of all Lots in the building decide within 90 days after such damage or destruction not to proceed with repair or restoration, the net proceeds of insurance policies, if any, shall be divided among the Owners in proportion to the damage, as determined by the insurer, to their insured property in relation to the total damage (including demolition) to all the insured property, provided, however, that no payment shall be made to a Lot Owner until there has first been paid off out of such Owner's share of such funds all liens on such Owner's Lot. In the event that insurance proceeds are, for any reason, insufficient to pay all of the costs of restoring or repairing the property to the same condition as formerly existed, the Board of Directors shall levy a special assessment to make up the deficiency against the Lot Owners of the damaged property, which special assessment shall be levied in proportion to the damage, as determined by the insurer, to their insured property in relation to the total damage to all the insured property.

In the event of damage to or destruction of any common property or facility of the Association, insured through insurance obtained by the Board of Directors, as a result of fire or other casualty, the Board of Directors shall (i) promptly send written notice of such damage or destruction to all institutional first mortgagees whose names appear on the records of the Association and to the insurance trustee, if any, and the Board of Directors or the insurance trustee, as the case may be, shall (ii) arrange for the prompt repair and restoration of the damaged property and (iii) disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments. In the event that the insurance proceeds exceed the cost of repair and reconstruction of such Association Property, no Lot Owner or any other party shall have priority to receive any portion of such surplus over such Lot Owner's mortgagee.

Section 9.03. Insurance Carried by Unit Owners. Each Unit Owner has the right, at such Owner's expense, to obtain insurance for such Owner's benefit, including (1) fire, casualty and theft coverage for such Owner's personal property, (2) coverage for such Owner's personal liability within such Owner's Unit and on such Owner's Lot and (3) fire and casualty insurance coverage for "improvements and betterments" to such Owner's Unit or Lot which may not be covered by fire and casualty insurance obtained by or through the Association, provided, however, that (i) such policies contain waivers of subrogation, if available, and (ii) the liability of the carriers issuing insurance procured by the Board of Directors shall not be affected or diminished by reason of any such additional insurance carried by the Owner.

Section 9.04. Right of Mortgagees to Pay and be Reimbursed for Insurance and Property Taxes on Association Property. In the event the Association fails to obtain or maintain fire, casualty and liability insurance for Association Property as required under this Article IX, such insurance may be obtained by one or more mortgagees of Lots, singly or jointly. Such mortgagee or mortgagees shall be owed immediate reimbursement from the Association for any

amount expended for such insurance, real property taxes or any other charges with respect to Association Property which are in default and which may become or have become a charge against the Association Property.

ARTICLE X GENERAL COVENANTS AND RESTRICTIONS

Section 10.01. Advertising and Signs. Except for signs erected by or with the permission of the Sponsor in connection with the initial development, lease or sale of Lots or Units, no additional sign or other advertising device of any nature shall be placed for display to the public view on any Lot or other portion of Property (including temporary signs advertising property for sale or rent) except with the consent of the Board of Directors.

Section 10.02. No Animals, Birds and Insects. Except for one dog or one cat owned by an initial purchaser of a Lot at the time such initial purchaser entered into a contract for the purchase of a Lot, fish, or birds kept in a cage, no animals, birds or insects (including replacements, after demise or disposition of any dog or oat owned by a Lot Owner at the time of entering into the contract for the purchase of such Owner's Lot) shall be kept or maintained on any Lot or other portion of the Property except with the consent of the Board of Directors of the Association which may, from time to time, (i) impose reasonable rules and regulations setting forth the type and number of animals, birds and insects and (ii) prohibit certain types of animals, birds or insects entirely. The Board of Directors of the Association shall have the right to require any Lot Owner (or any tenant of any Owner, or any family member or guest of any Owner or tenant) to dispose of any animal, bird or insect, if, in the opinion of the Board of Directors, acting in its sole discretion, such animal, bird or insect is creating a nuisance because, e.g., the Lot Owner does not clean up after the animal, the animal is too noisy, or the animal is not properly controlled.

Section 10.03. Protective Screening and Fences. Any screen, planting, fence enclosures or walls initially placed on a Lot or other portion of the Property shall not be removed or replaced with other than a similar type of planting, fence or wall except with the permission of the Architectural Committee. Except for the foregoing, no fence, wall, or screen planting of any kind shall be planted, installed or erected upon said Lot or other portion of the Property unless approved by the Board of Directors. Notwithstanding the foregoing, no fence, wall or screen planting shall be maintained so as to obstruct sight lines for vehicular traffic.

Section 10.04. Garbage and Refuse Disposal. Except for building materials during the course of construction or repair of any approved improvements, no lumber, metals, bulk materials, rubbish, refuse, garbage, trash or other waste material (all of which are referred to hereinafter as "Trash") shall be kept, stored, or allowed to accumulate, outdoors on any portion of the Property, except in sanitary containers and screened from adjacent and surrounding property. Such containers may be placed in the open within 24 hours of a scheduled pick-up, at such place on the Lot or other portion of the Property designated by the Board of Directors, so as to provide access to persons making such pick-up. The Board of Directors may, in its discretion,

adopt and promulgate reasonable rules and regulations relating to size, shape, color and type of containers permitted and the manner of storage of the same on any portion of the Property. All facilities for the storage or disposal of Trash, shall be kept in a clean and sanitary condition.

Section 10.05. No Above Surface Utilities Without Approval. No facilities, including without limitation, poles and wires for the transmission of electricity or telephone messages, and water, gas, sanitary and storm sewer drainage pipes and conduits shall be placed or maintained above the surface of the ground on any portion of the Property without the prior written approval of the Association's Board of Directors.

Section 10.06. No Noxious or Offensive Activities. No noxious or offensive activity shall be carried out upon any portion of the Property, nor shall anything be done thereon that may be or become a nuisance or annoyance in the area or to the residents or Lot Owners thereof. The emission of smoke, soot, fly ash, dust, fumes, herbicides, insecticides, and other types of air pollution or radioactive emissions or electro-magnetic radiation disturbances, shall be controlled so as not to (i) be detrimental to or endanger the public health, safety, comfort or welfare, (ii) be injurious to property, vegetation or animals, (iii) adversely affect property values or otherwise produce a public nuisance or hazard or (iv) violate any applicable zoning regulation or other governmental law, ordinance or code.

Section 10.07. Dwelling in Other Than Residential Units. No temporary building, trailer, basement, tent, shack, barn, outbuilding, shed, garage, or building in the course of construction or other temporary structure shall be used, temporarily or permanently, as a dwelling on any Lot or other portion of the Property except with the consent of the Board of Directors of the Association.

Section 10.08. No Television and Communication Antennas. No outside television, radio, "C. B." or other communication antenna or satellite dish shall be erected on any Lot or other portion of the Property except with the consent of the Association's Board of Directors.

Section 10.09. Trees and Other Natural Features. After the transfer of title by the Sponsor to a Lot or other portion of the Property no trees shall be removed from any such transferred Lot or other portion of the Property except with the permission of the Association's Board of Directors. The Association's Board of Directors in its discretion, may adopt and promulgate rules and regulations regarding the preservation of trees and other natural resources and wildlife upon the Property.

Section 10.10. Residential Use Only. Except as provided in Section 10.11 below, the Property shall be used only for residential purposes and purposes incidental and accessory thereto except that, prior to transfer of title by the Sponsor to all of the Property, the Sponsor may use one or more Lots or other portions of the Property for model homes and/or a real estate office.

Section 10.11. No Commercial and Professional Activity on Property. No wholesale or retail business, including any salon, studio, laboratory, home industry or medical or dental office, shall be conducted in or on any Lot or other portion of the Property without the consent of the Board of Directors, except (i) by the Sponsor in conjunction with the initial construction, development, lease and sale of Lots and Units and (ii) the conducting of business by telephone. This restriction is not intended to preclude the operation of an in-home office for purposes other than those set forth above.

Section 10.12. No Outdoor Repair Work. With respect to a Lot or other portion of the Property to which title has been transferred by the Sponsor, no extensive work on any motor vehicles, boats or machines of any kind shall be permitted outdoors on such Lot or portion thereof, except with the consent of the Association's Board of Directors.

Section 10.13. No Oversized, Commercial, Recreational, or Unlicensed Vehicles, Camper Bodies, Boats or Trailers. Unless used in connection with the construction or sale of Lots and Buildings by the Sponsor, or maintenance of the Property, or unless garaged or otherwise consented to by the Board of Directors of the Association, the following shall not be permitted on the Property:

- a. oversized vehicles;
- b. commercial vehicles;
- c. recreational vehicles or trailers;
- d. unlicensed motor vehicles of any type;
- e. camper bodies;
- f. boats or trailers.

Section 10.14. No Clotheslines. No outdoor drying or airing of any clothing or bedding shall be permitted within the Property unless authorized by the Association's Board of Directors.

Section 10.15. Lease of Entire Unit Only. An Owner shall not lease any portion of a Unit (other than the entire Unit).

Section 10.16. No Operation of Snowmobiles, Motorcycles, All Terrain Vehicles or Similar Motor Vehicles. The operation of snowmobiles, motorcycles, all terrain vehicles or similar vehicles is prohibited within the Property unless authorized by the Association's Board of Directors.

ARTICLE XI
ENFORCEMENT, AMENDMENT AND DURATION OF DECLARATION

Section 11.01. Declaration Runs With the Land. Each person or entity acquiring an interest in a lot or other portion of the Property or otherwise occupying any portion of the Property (whether or not the deed, lease or any other instrument incorporates or refers to the Declaration) covenants and agrees for him, her, or itself, and for his, her or its heirs, successors and assigns, to observe, perform and be bound by the provisions of the Declaration including personal responsibility for the payment of all charges that may become liens against his, her or its property and which become due while he, she or it is the Owner thereof, and also covenants to incorporate this Declaration by reference in any deed, lease or other instrument further transferring an interest in such Lot or other portion of the Property.

Section 11.02. Enforceability.

- a. Actions at Law or Suits in Equity. The provisions of the Declaration shall bind the Property and shall be construed as running with the land and shall inure to the benefit of and be enforceable by the Sponsor and the Association (being hereby deemed the agent for all of the Owners), and by any member or Owner, their respective legal representatives, heirs, successors and assigns, by actions at law or by suits in equity. As it may be impossible to measure monetarily the damages which may accrue to the beneficiaries hereof by reason of a violation of the Declaration, any beneficiary hereof shall be entitled to relief by way of injunction or specific performance, as well as any other relief available at law or in equity, to enforce the provisions hereof.
- b. Penalties and Fines. In addition or as an alternative to an action at law or suit in equity, the Board of Directors of the Association may, with respect to any violation of this Declaration or of the By-Laws or of the rules and regulations of the Association or any committee of the Association, and after affording the alleged violator a reasonable opportunity to appear and be heard, establish monetary and non-monetary penalties, the amount and/or severity of which shall be reasonably related to the violation and to the aim of deterring similar future violations by the same or any other person. Monetary penalties imposed against a Lot Owner or Unit occupant shall be deemed a Special Assessment against the Lot of such Owner or on which the Unit occupied by such occupant is located and, as such, shall be a charge and continuing lien upon such Lot, shall constitute a personal obligation of the Lot Owner, and shall be collectible in the same manner as Assessments under Article V of this Declaration.

Section 11.03. No Waiver by Failure to Enforce. The failure of any beneficiary hereof to enforce any provision of the Declaration shall in no event be construed as a waiver of

the right by that beneficiary or any other to do so thereafter, as to the same or a similar violation occurring prior or subsequent thereto. No liability shall attach to the Sponsor, the Association (or any officer, director, employee, Member, agent, committee or committee member) or to any other person or organization for failure to enforce the provisions of the Declaration.

Section 11.04. Obligation and Lien for Cost of Enforcement by Association. If the Association or any other party successfully brings an action to extinguish a violation or otherwise enforce the provisions of the Declaration, or the rules and regulations promulgated hereto, the costs of such action, including legal fees, shall become a binding, personal obligation of the violator. If such violator is (1) the Lot Owner, or (2) any family member, tenant, guest or invitee of the Lot Owner, or (3) a family member or guest or invitee of the tenant of the Lot Owner, or (4) a guest or invitee of (i) any member of such Lot Owner's family or (ii) any family member of the tenant of such Owner, such costs shall also be a lien upon the Lot owned by such Owner.

Section 11.05. Inspection and Entry Rights. Any agent of the Association (or of the Architectural Committee) may at any reasonable time or times, upon not less than 24 hours notice to the Lot Owner, enter upon the Lot of such Owner to inspect the improvements thereon for the purpose of ascertaining whether the maintenance, construction or alteration of structures or other improvements thereon comply with the Declaration, or with rules and regulations issued pursuant hereto. Neither the Association nor any such agent shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

In addition to the above, if the Architectural Committee determines that it is necessary to trim, cut or prune any tree, hedge or other planting because its location, the height to which, or the manner in which it has been permitted to grow, is unsightly, detrimental or potentially detrimental to persons or property or obscures the view of street traffic or is otherwise in violation of this Declaration, the Association shall notify the Owner of the Lot or other portion of the Property who shall be obliged to remedy the violation. If the Owner fails to remedy the violation within 30 days after such notice is given, then the Association may take such remedial action at the expense of the Owner.

Section 11.06. Notification to Association of Mortgagees and Default Notices to be Sent to Mortgagees. The Association shall be notified by each Lot Owner or such Lot Owner's mortgagee of the name and address of the mortgagee of any mortgage on such Owner's Lot. Upon receipt of such notice, the Association shall thereafter provide such mortgagee with a duplicate copy of arty notice of default sent to such Owner with regard to the violation, by such Owner, of any provision of this Declaration.

Section 11.07. Amending Declaration. The Sponsor, during the time it shall own any of the lands described in Schedules A and B to this Declaration, may make amendments to this Declaration to correct omissions or errors, which amendments shall not adversely modify substantial rights of any Owner without such Owner's written consent.

Except as otherwise specifically provided for in this Declaration, including Section 2.02, Section 5.06, and the above portion of this Section 11.07, the Board of Directors on its own initiative, or pursuant to a written petition signed by Owners of not less than 25 percent of the Lots owned by persons independent of the Sponsor, may propose an amendment to the Declaration.

The Board of Directors shall hold a Hearing in accordance with Section 4.13 herein for the purpose of considering such proposed amendment. Notice shall be given as required by Section 4.13.

The date or initial date for the canvass of the vote on the proposed amendment shall be not less than 30 nor more than 45 days after the Hearing. Notice of such vote, containing the date, time and place of the canvass thereof and a copy of the proposed amendment, with such changes as the Board of Directors shall have made as a result of the written and oral comments received at the Hearing, and a form of ballot shall be mailed or delivered by the Board of Directors to all Owners not less than 14 days prior to the date or initial date set for the canvass thereof.

The affirmative vote of Owners of 67% or more of the total number of Lots shall be required for approval of a proposed amendment; provided, however, that so long as the Sponsor holds title to any lands covered by this Declaration, the written consent of the Sponsor will be required for any amendment which adversely affects a substantial interest or right of the Sponsor, which consent must not be unreasonably withheld.

In addition to the approval of the Lot Owners and Sponsor as provided for herein, no amendment which substantially affects the interest of any lending institution shall be effective if lending institutions which together are first mortgagees on 51% or more of the Residential Lots advise the Association in writing, prior to the date or initial date set for voting on the proposed amendment, that they are opposed to such amendment, which opposition must not be unreasonable. Written notice of any proposed amendment which substantially affects the interest of any lending institution first mortgagee shall be sent to all such lending institution first mortgagees whose names appear on the records of the Association at least 30 days prior to the date or initial date set for voting on the proposed amendment.

No amendment shall terminate, extinguish or adversely modify any easement granted in this Declaration which benefits Lots or Units except with respect to those Lots or Units whose owners specifically consent in writing to such termination, extinguishment or modification.

Section 11.08. Owner Responsible for Tenants. Any lease of a Unit shall provide and specify in writing within the lease specific reference to the "Declaration" and that the tenant shall comply in all respects with the terms of the Declaration, By-Laws, and rules and regulations, if any, of the Association. If a tenant is in violation of such Declaration, By-Laws or rules and regulations, the Board of Directors shall so notify the Owner of the Unit which such

tenant occupies in writing by certified mail, return receipt requested. If the violation is not cured or eviction proceedings are not commenced against the tenant within 14 days after the Owner has received notice of such violation, and diligently pursued thereafter, the Board of Directors may pursue any remedies which it may have pursuant to Section 11.02 of this Declaration.

Section 11.09. When Amendment or Termination Becomes Effective. Any amendment or termination of this Declaration shall not become effective until the instrument evidencing such change has been duly recorded in the office of the Clerk of the County of Cattaraugus. Such instrument need not contain the written consent of the required number of Owners but shall contain a certification by the Board of Directors of the Association that the consents required for such amendment have been received and filed with the Board.

Section 11.10. Duration. Except as otherwise provided herein, this Declaration shall continue with full force and effect perpetually unless terminated by affirmative vote of not less than 90% of the total number of Lot Owners after a Hearing is held in accordance with Section 4.13 of this Declaration.

The date or initial date for the canvass of the vote on any proposed termination shall be not less than 30 nor more than 45 days after the Hearing. Notice of such vote, containing the date, time and place of the canvass thereof, and a form of ballot, shall be mailed or delivered to all Lot Owners not less than 14 days prior to the date of or initial date set for the canvass thereof.

Not less than a majority of the total number of Lot Owners shall be required for termination.

Any approved termination to the Declaration shall become effective only when an instrument describing such termination has been duly recorded in the Office of the Clerk of the County of Cattaraugus and upon such recording shall be binding from the date of such recording on all of the Property unless otherwise specifically provided in such termination. Such instrument need not contain the written consent of the required number of Lot Owners but shall contain a certification by the Board of Directors that the consents required for such termination have been received and filed by the Board.

Section 11.11. Construction and Interpretation. The Association shall have the right to construe and interpret the provisions of this Declaration and, in the absence of an adjudication by a court of competent jurisdiction to the contrary, its construction or interpretation shall be final and binding as to all persons or property benefited or bound by the provisions hereof.

Any conflict in construction or interpretation between the Association and any other person or entity entitled to enforce the provisions hereof shall be resolved in favor of the construction or interpretation of the Association. The Association may adopt and promulgate reasonable rules and regulations regarding the administration, interpretation and enforcement of

the provisions of this Declaration. In so adopting and promulgating such rules and regulations, and in making any finding, determination, ruling or order or in carrying out any directive contained herein relating to the issuance of permits, authorizations, approvals, rules or regulations, the Association shall take into consideration the best interests of the Owners and residents of the Property for the purpose of preserving and maintaining the Property as a high quality community.

In granting any permit, authorization, or approval, as herein provided, the Association may impose any conditions or limitations thereon as it shall deem advisable under the circumstances in each case in light of the considerations set forth in the immediately preceding paragraph hereof.

Section 11.12. Conflict with Municipal Laws. The protective covenants, conditions and restrictions set forth herein shall not be taken as permitting any action or thing prohibited by the applicable zoning laws, or the laws, ordinances, rules or regulations of any governmental authority, or by specific restrictions imposed by any deed or lease.

Section 11.13. Change of Conditions. No change of conditions or circumstances shall operate to amend any of the provisions of this Declaration, and the same may be amended only in the manner provided herein.

Section 11.14. Invalidity of Agreement or Declaration. The determination by any court that any provision hereof is unenforceable, invalid or void shall not affect the enforceability or validity of any other provision hereof.

ARTICLE XII

GENERAL

Section 12.01. Headings and Captions. The headings and captions contained in this Declaration are for convenience only and shall not affect the meaning or interpretation of the content thereof.

Section 12.02. Right Reserved to Sponsor to Impose Additional Protective Covenants. The Sponsor reserves the right to record additional protective covenants and restrictions prior to the conveyance of any lands encumbered by this Declaration.

Section 12.03. Notice. Any notice required to be sent to the Sponsor or to any Owner or mortgagee under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of the person or entity appearing as the Sponsor, Owner or mortgagee on the records of the Association at the time of such mailing.

Section 12.04. Right of Association to Transfer Interest. Notwithstanding any other provision herein to the contrary, the Association and its successors, shall at all times have

the absolute right to fully transfer, convey and assign its right, title and interest under this Declaration to any successor not-for-profit corporation or trust and, upon such assignment, the successor corporation or trust shall have all the rights and be subject to all the duties of said Association as set forth in this Declaration and shall be deemed to have agreed to be bound by all provisions hereof, to the same extent as if the successor corporation or trust had been an original party, and all references herein to the Board of Directors shall refer to the Board of Directors (or Trustees) of such successor corporation or trust. Any such assignment shall be accepted by the successor corporation or trust under a written agreement pursuant to which the successor corporation or trust expressly assumes all the duties and obligations of the Association. If, for any reason, the Association shall cease to exist without having first assigned its rights hereunder to a successor corporation or trust, the covenants, easements, charges and liens imposed hereunder shall nevertheless continue and any Lot Owner may petition the court of competent jurisdiction to appoint a trustee for the purpose of organizing a not-for-profit corporation or trust to take over the duties and responsibility of the entity to exist, subject to the conditions provided for herein with respect to an assignment and delegation to a successor corporation or trust.

Section 12.05. Right of Association to Transfer Functions. Unless otherwise specifically prohibited herein or within the Certificate of Incorporation or By-laws of the Association, any and all functions of the Association shall be fully transferable in whole or in part to any other homeowners' or residents' association or similar entity.

EVL MOUNTAINVIEW, LLC

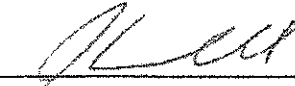
MOUNTAINVIEW TOWNHOUSES
ASSOCIATION, INC.

By



John A. Ciminelli, President

By



John A. Ciminelli, President

STATE OF NEW YORK)
)
) :ss.
)
COUNTY OF ERIE)

On the 25 day of October, in the year 2004, before me, the undersigned personally appeared John A. Ciminelli, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.



Notary Public

STATE OF NEW YORK)
)
) :ss.
)
COUNTY OF ERIE)

AMY J. FITCH
No. 02F15080701
Notary Public, State of New York
Qualified in Erie County
My Commission Expires June 16, 2007

On the ____ day of October, in the year 2004, before me, the undersigned personally appeared John A. Ciminelli, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.



Notary Public

AMY J. FITCH
No. 02F15080701
Notary Public, State of New York
Qualified in Erie County
My Commission Expires June 16, 2007

SCHEDULE A

(Lands initially covered by the Declaration)

(Phase I)

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Ellicottville, County of Cattaraugus and State of New York, being part of Village Lots Nos. 95 and 96, Township 4, Range 6 of the Holland Land Company's Survey, bounded and described as follows:

BEGINNING at a point in the northeasterly line of Village Lot No. 96 distant 2321.91 feet measured southerly from the northwesterly line of Village Lot No. 96, being the southeast corner of the Northwood Subdivision as filed in the Cattaraugus County Clerk's Office under Cover No. 1846; thence S 29° 00' 41" E along said northeasterly line of Village Lot No. 96, a distance of 565.21 feet to a point; thence S 59° 43' 30" W, a distance of 355.91 feet to a point on the southwesterly line of said Village Lot No. 96; thence N 29° 21' 54" W along the southwesterly line of said Village Lot No. 96, a distance of 61.29 feet to a point; thence northwesterly on a curve to the left having a radius of 180.39 feet, an arc distance of 26.62 feet to a point; thence N 25° 27' 59" E, a distance of 116.44 feet to a point; thence northeasterly on a curve to the right having a radius of 20.00 feet, an arc distance of 12.22 feet to a point; thence N 60° 28' 38" E, a distance of 5.15 feet to a point; thence N 38° 34' 53" E, a distance of 78.57 feet to a point; thence N 51° 25' 07" W, a distance of 214.51 feet to a point on the southeasterly line of the aforementioned Northwood Subdivision; thence N 23° 43' 22" E along the southeasterly line of the aforementioned Northwood Subdivision, a distance of 37.97 feet to a point on the southwesterly line of Northwood Drive; thence S 66° 16' 30" E along the southwesterly line of Northwood Drive, a distance of 10.93 feet to a point, being the southwesterly terminus of Northwood Drive; thence N 23° 43' 22" E along the southeasterly line of Northwood Drive, in part, and along the aforementioned Northwood Subdivision, a distance of 286.66 feet to the point or place of beginning.

EXCEPTING therefrom the following parcel of land, designated as Parcel 1 on a Plat Map entitled Mountainview Subdivision, Northwood Drive, Ellicottville, New York prepared by E&M Engineers and Surveyors, P.C., dated July 12, 2004, Project Number 1923005, which Plat Map was filed in the Cattaraugus County Clerk's Office under Cover No. _____, which parcel of land was conveyed for highway purposes to the Town of Ellicottville and is further described as follows:

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Ellicottville, County of Cattaraugus and State of New York, being part of Village Lot No. 96, Township 4, Range 6 of the Holland Land Company's Survey, bounded and described as follows:

BEGINNING at the intersection of the northeasterly line of Northwood Drive and the southeasterly line of the Northwood Subdivision as shown on a map filed in the Cattaraugus County Clerk's Office under Cover No. 1846; thence southeasterly along a curve to the right

having a radius of 191.34 feet, an arc distance of 125.73 feet to a point; thence S 51°58' 00" W, a distance of 39.12 feet to a point; thence westerly and northwesterly along a curve to the right having a radius of 53.92 feet, an arc distance of 76.36 feet to a point; thence N 38°02' 00" W, a distance of 46.97 feet to a point on the southeasterly line of the aforementioned Cover No. 1846; thence N 23° 43' 22" E, a distance of 14.45 feet to a point on the southwesterly line of Northwood Drive; thence S 66°16' 30" E along the southwesterly line of Northwood Drive, a distance of 10.93 feet to a point, being the southwesterly terminus of Northwood Drive; thence N 23° 43' 22" E along the southeasterly line of Northwood Drive, a distance of 60.00 feet to the point or place of beginning.

SCHEDULE B

(Lands which may be added by Sponsor without consent of Lot Owners or Association)

(Phase II)

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Ellicottville, County of Cattaraugus and State of New York being part of Lot 96, Township 4, Range 6 of the Holland Land Company's Survey bounded and described as follows:

BEGINNING at a point with the northwest corner of lands conveyed to the County of Cattaraugus as recorded in the Cattaraugus County Clerk's Office in Liber 948 of Deeds at page 710; thence N 30°- 16'-52" W along the northeasterly line of the Pinetree Village Subdivision as filed in the Cattaraugus County Clerk's Office under Map Cover No. 1685, a distance of 73.79 feet to a point being the southeast corner of the Northwood Subdivision as filed in the Cattaraugus County Clerk's Office under Map Cover No. 1826; thence N 23°- 43'-22" E along the south line of said Map Cover No. 1826, a distance of 241.42 feet to a point in the Phase Division Line of the Mountainview Subdivision ; thence S 51°- 25'-07" E along said Phase Division Line, a distance of 214.51 feet to a point; thence S 38°- 34'-53" W along said Division Line, a distance of 78.57 feet to a point; thence S 60°- 28'-38" W, a distance of 5.15 feet to a point; thence southerly and along said Phase Division Line having a non tangent curve to the left having a radius of 20.00 feet and an arc length of 12.22 feet to a point; thence S 25°- 27'-59" W, a distance of 116.44 feet to a point in the northeasterly line of said lands conveyed to the County of Cattaraugus; thence on a curve to the left having a radius of 180.39 feet and a arc length of 121.21 feet to the Point of Beginning.